IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3086 OF 2006
IN
FIRST APPEAL NO.866 OF 2007

The National Insurance Co.Ltd. ..Applicant

V/s.

Rajan K. Nambiar & ors ..Respondents

Mr.S.M.Vidyarthi for the applicant
Mr.M.G.Barve for the respondent No.4

CORAM : SMT.R.S.DALVI, J.

DATE : 16TH APRIL, 2007

P.C.

1. The applicant/claimant has applied for withdrawal of the entire amount of compensation deposited by the National Insurance Co.Ltd. as per the order dated 16th June, 2006. The application is filed for the order dated 16th June, 2006 to be modified.

2. The applicant has been allowed to withdraw 50% of the amount deposited.

3. The appeal is filed essentially upon the

contention that a xerox copy of the Insurance Policy which has been filed on record has not been proved. It will have to be determined whether an applicant would be entitled to merely file on record xerox copy or whether the secondary evidence would have to be led to prove a copy of the Insurance Policy since it is alleged to be forged and since the Judgment does not disclose that it has been proved as the secondary evidence. No further amount can be allowed to be withdrawn pending the appeal.

4. The applicant has relied upon the Judgment of the Supreme Court in **National Insurance Co. Ltd. v. Bhagu Devi and others**, reported in **2000 ACJ 1037** in which in case of fraudulently obtaining a backdated insurance cover, the Supreme Court has allowed the claimants the entire amount to be withdrawn. Withdrawal of the amount is as to how the discretion of the Court. The question of law is as to how the insurance cover would have to be proved. No case is made out for withdrawal of the amount. Hence, Civil Application is rejected.

(SMT.R.S.DALVI, J.)